**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6883 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SURENDRASINH BANTASINH RAJPUT - Petitioner(s)**
**Versus**
**SUB DIVISIONAL MAGISTRATE & 3 - Respondent(s)**

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**Appearance :**

MR YV BRAHMBHATT for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.
MS ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 15/06/2006**

**ORAL JUDGMENT**

1. The petitioner has come to this Court being aggrieved of an order passed by the Sub-Divisional Magistrate, Kheda Prant, dated 22nd December, 2005,

whereby, an application made by the petitioner for granting and/or renewing the hotel licence was rejected. The petitioner, aggrieved of that, preferred an appeal being No. POL(2)/SR/1/06/VASI/925 to 928. The said appeal was considered by the District Magistrate, Kheda at Nadiad, and was dismissed by order dated 29th March, 2006.

2. It is the case of the petitioner as set out in the petition at para – 2 that *the petitioner is doing hotel business of Eatables since(sic., for) last 30 years; that his hotel is situated at the sim of Antroli, Taluka Matar, on the highway in Block No. 525, Property No. 399; that the name of the hotel is 'Guru Nanak Hotel and Restaurant.'* Mr. Brahmbhatt, learned advocate for the petitioner, vehemently contended that the orders of the authorities are vitiated as the authorities did not grant the petitioner an opportunity of hearing before passing the order under challenge. The order passed by the Sub-Divisional Magistrate, Kheda

Prant, is at Annexure – D, dated 22nd December, 2005. The order states that the petitioner had made an application, which did not bear the date, pursuant to that the authorities sought for the report of the Mamlatdar, Matar, which was submitted on 6th May, 2005 and was considered by the Sub-Divisional Magistrate, Kheda Prant. The Sub-Divisional Magistrate, Kheda Prant, has recorded in the order that from the report of the Mamlatdar, it is noticed that the petitioner was running the hotel without licence/permission, and he was also found using LPG Gas Cylinders meant for domestic use in his commercial establishment. He was thus, committing breach of LPG (Supply & Distribution) Rules. The petitioner was fined by the District Supply Officer, Kheda, by order No. Supply/TPS/6A/Case No.41/5 dated 26th September, 2005 for a sum of Rs.2250/-.

The Sub-Divisional Magistrate has also recorded that *“it is not produced on record as to whether the land in question is granted N.A. Permission.”*

The petitioner did not produce any material in support of his possession and did not demonstrate as to in what capacity the possession is held by the petitioner. The authorities by taking into consideration the provisions of Rules – 4(6)(g) refused to grant the licence to the petitioner.

3. The learned advocate for the petitioner did not concentrate on the grounds, on which, according to him the order is vitiated. He argued only two points (i) that his client was holding licence in the past and he was carrying on business for last 30 years and (ii) that the order is vitiated as the authorities did not give an opportunity of hearing before passing the order.

In the considered opinion of this Court, both these submissions are without any merits. The learned advocate for the petitioner produced a copy of an order issued by the Taluka Panchayat bearing No. LND/NA/22/VASI/3703 dated 7th October, 1978. The learned advocate submitted that though this order

does not refer land which is referred to in order dated 22nd December, 2005 passed by the Sub-Divisional Magistrate, it should be believed that both the orders pertaining to the same land. When it was pointed out to the learned advocate that the land referred to in order dated 7th October, 1978 is Survey No. 266 of village Antroli, Taluka Matar, admeasuring 1-Acre and 0-Guntha and the land referred to in order dated 22nd December, 2005 is the land of Block No. 525 of village Antroli, Taluka Matar, bearing Property No. 399. In such circumstances it is for the petitioner to satisfy the Court that both these orders are pertaining to one land. The learned advocate did not pay any heed to that. The learned advocate insisted that the Court shall consider his aforesaid two submissions namely, (i) holding of licence in past and running of hotel business for last 30 years and (ii) that the order is passed without giving an opportunity of hearing to the petitioner.

4. The learned advocate has produced on record an

application at Annexure – C, dated 23rd September, 2003. The subject mentioned in the application is 'renewal of hotel licence bearing No. 13/91'. It is mentioned in this application that, 'the applicant had submitted his licence for renewal in the Office of Prant Officer but then the same is not received by him duly renewed and therefore, necessary action is solicited.' Interestingly, the applicant does not mention the date on which he submitted his licence in the Office of the Prant Officer. He does not produce any documentary proof in support of his say that the licence was tendered in the Office of the Prant Officer. Without an acknowledgement receipt a document like licence could not have been submitted in the Office of the Prant Officer. Still, the learned advocate insisted that the contents of that application be believed. The learned advocate invited the attention of the Court to a Chalan, a copy of which is produced at Page No. 27. Interestingly, this Chalan is dated 19th December, 2001 and in details column it is mentioned that, 'towards renewal fees of hotel

licence No. MT-13/91,' an amount of Rs. 250/- is paid in the Treasury. Despite best efforts, the Court could not co-relate the contents of page No.26 i.e. the application and the Chalan at Page No.27. When it is put to the learned advocate, he repeated his earlier submissions and did not respond to the query of the Court.

5. The learned advocate next invited the attention of the Court to a typed copy of the 'seizure order' passed by the Mamlatdar, Matar, on 4th May, 2005. In that order the Mamlatdar, Matar, has recorded that the proprietor of the hotel – 'Guru Nanak,' the petitioner – Surendarsinh Mantasinh, informed him that his licence is renewed upto 31st March, 2005 but then he did not produce the same. He stated that the same is sent for renewal to the Office of the Prant Officer, but, no any documentary evidence to substantiate his submission is produced. The order then proceeds to mention that three empty Gas Cylinders meant for domestic use were seized from the hotel premises of the petitioner and the same

were taken possession of by the Mamlatdar, Matar.

6. The learned advocate placed heavy reliance on a decision of this Court in the matter of ***Yusufbhai Noormohmad Mukhi V/s. District Magistrate & Ors.*** reported in **2003(1) GLH Page-52**. The learned advocate submitted that in the aforesaid decision this Court has held that, 'grant of licence cannot be refused relying on the objections raised by the landlord and that non-production of the document of N.A.Permission should be considered to be an extraneous ground for rejecting the grant/renewal of licence.'

The learned advocate read the judgment in its entirety. Despite that, the learned advocate was not able to appreciate that the said decision has no application to the facts of the present case.

In the aforesaid case, the facts were that the petitioner applied for 'renewal of licence' to which, the landlord objected. Thereafter, the

authority, considering the objections and non-production of the documents pertaining to N.A.Permission, refused to grant licence.

From the aforesaid facts it is clear that it was the case wherein, the landlord wanted his tenant to be out by employing an indirect method of not allowing the licence to get renewed. In the present case, the facts are totally different. In the case on hand on the ground of non-production of papers relating to N.A.Permission renewal of licence is not denied. In the present case, the petitioner has not bothered to conduct his affairs as warranted under the law. He is not able to produce a copy of the licence, which is expected to be in his possession. He is also not able to produce any material, documentary evidence to substantiate his submissions that he has tendered his licence in the Prant Officer's Office for renewal.

The grounds, on which, the order passed by the authority is assailed are that the order is passed

without giving an opportunity of hearing to the petitioner and that the petitioner was holding the licence in past and he was carrying on business for last 30 years.

7. In the considered opinion of this Court, both these grounds have no substance. The Court finds no reason to interfere with the orders passed by the authorities. In the result, the petition fails and the same is dismissed. Notice is discharged. No order as to costs.

(RAVI R. TRIPATHI, J.)

kdc.